Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149
	)	
and	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic telephone and interexchange companies

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September 13, 1996

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SUMMARY

GTE has shown in its opening Comments that Independent LECs are non-dominant in interexchange services under the analysis that the Commission has applied without exception to the interexchange services market, including most recently in the *AT&T Nondominance Proceeding*. No party has even attempted to show that Independent LECs could obtain market power under this test for market dominance applied by the FCC to every other interexchange service provider.

In their opening Comments, incumbent interexchange carriers ("IXCs") and competing access providers generally ignore the Telecommunications Act of 1996, and advocate a host of regulatory restrictions whose only consequence would be to prevent Independent LECs from competing on an equal and equitable basis in the interexchange marketplace. GTE urges the Commission to reject these arguments which plainly contravene the 1996 Act.

Possession of a bottleneck is not misconduct, nor does it suffice to establish market power in a downstream market. The IXCs, which seemingly fear competition from Independent LECs, have not shown how dominant regulation of Independent LECs' interexchange services could conceivably address alleged misconduct in local exchange and/or access markets. Similarly, AT&T's effort to divert the Commission's attention from its own commanding position in interexchange services by focusing on Independent LECs' alleged bottleneck facilities is unpersuasive.

The FCC should also reject the IXCs' attempts to "bootstrap" dominant carrier regulation by imposing burdensome tariff notification requirements. There is not a shred of evidence that such tariffing requirements are necessary, given existing accounting and other nonstructural safeguards that the FCC has long found sufficient to protect ratepayers.

GTE also demonstrated in its opening Comments that there is no basis for imposing a separate affiliate requirement on Independent LECs. Section 601 of the 1996 Act precludes treating Independent LECs as if they were Bell companies, as urged by competitors. Moreover, in light of the Independent LEC's lack of interexchange market power, the FCC should remove the *Competitive Carrier* separate affiliate requirement for an Independent LEC to operate as a non-dominant interexchange service provider. The separate affiliate requirement harms both consumers, by imposing unnecessary costs, and competition, by unfairly burdening a potential interexchange competitor. Further, there is no basis for creating different regulatory policies for "large" and "small" Independent LECs; neither has market power in interexchange services.

Finally, contrary to the suggestion of the Commonwealth of the Northern Mariana Islands, the GTE telephone company operating in the Northern Mariana Islands, Micronesian Telecommunications Corporation, operates in full conformity with the Commission's domestic and international *Competitive Carrier* policies.

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REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone and interexchange companies, hereby submits its Reply to the Comments regarding Independent local exchange carrier ("Independent LEC") issues raised by the *Notice of Proposed Rulemaking* (*"Notice"* or *"NPRM"*) in the above-captioned proceeding.[1]

INTRODUCTION

In its opening Comments, GTE, supported by a statement submitted by Professor Paul A. MacAvoy, showed that:

- Independent LECs are non-dominant in interexchange services under the analysis that the Commission has applied without exception in the interexchange services market, including most recently in the *AT&T Nondominance Proceeding*.

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[1] FCC 96-308 (released July 18, 1996).

- Independent LECs have no ability or realistic incentive to engage in discrimination against interexchange carriers.

- Section 601 of the 1996 Act and the characteristics of Independent LECs eliminate any legal, factual or policy basis for imposing a separate affiliate requirement on Independent LECs for the provision of interstate, interexchange and international services.

The Comments addressing Independent LEC issues fall generally into two distinct categories. Independent LECs and end users uniformly urge the Commission to recognize that, consistent with the pro-competitive intent of the 1996 Act, the past decade of regulatory changes,[2] and the emergence of strong, well-financed and unregulated local and interexchange competitors, Independent LECs are non-dominant in interexchange services. This finding eliminates any need for continuing to require them to provide such services through a *Competitive Carrier* separate affiliate.

In contrast, incumbent interexchange carriers ("IXCs"), with the exception of Sprint, and competing access providers ignore the 1996 Act, except when it suits their purposes, and advocate a host of regulatory restrictions whose only consequence would be to prevent Independent LECs from competing on an equal and equitable basis in the interexchange marketplace. As these arguments plainly contravene the 1996 Act, the Commission should reject them.

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[2] The Comments of Citizens Utilities Companies (at 4-5) also provide a good summary of regulatory policies adopted since the *Fifth Report and Order* in *the Competitive Carrier Proceeding*, under which Independent LECs are currently classified as non-dominant in interexchange services. These include rules affecting LEC unregulated activities, cost and separations rules regarding affiliate transactions, cost allocations, cost allocation manuals, and ARMIS audits.

I. THE RECORD OVERWHELMINGLY SUPPORTS CLASSIFYING INDEPENDENT LECS AS NON-DOMINANT IN THE INTEREXCHANGE MARKET (¶157).

GTE's opening Comments demonstrated that Independent LECs, which enter the interexchange services market with a share of nearly zero and which must compete with well-established, facilities-based IXCs such as AT&T and MCI, cannot be considered dominant in the interexchange services market under any reasonable analysis.[3] None of the arguments to the contrary in the Comments justifies a different conclusion.

Significantly, *no party* has made *any* attempt to argue in this proceeding that Independent LECs could obtain market power on the basis of the tests traditionally applied by the Commission in assessing dominance. Perhaps recognizing the futility of such an argument, AT&T resorts to the old argument that dominance can be shown "directly" on the basis of the Independent LECs' "control of local bottleneck facilities that are essential to the provision of long-distance services -- or when undisputed power in one market (local services) can be leveraged to impede competition in a second market (interexchange)."[4] This argument is completely unavailing, as is the fall-back argument

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[3] GTE showed that, on the basis *of Motion of AT&T Corp. To be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995) ("*AT&T Nondominance Order*"), the Commission could not find Independent LECs to be dominant unless the FCC were to conclude that Independent LECs could: (1) quickly obtain at least the 55 percent market share that AT&T possesses (which necessarily would mean that supply and demand elasticities had changed dramatically in less than a year; (2) charge rates *higher* than other IXCs; and (3) sustain such a position long enough to recover any associated losses. *See* GTE Comments at 10-11.

[4] AT&T Comments at 4.

made by AT&T and MCI that seeks to regulate Independent LECs' interexchange tariffs as, in effect, dominant by urging 45-day tariff review as a means of preventing the potential for cross-subsidy.

A. The Record Provides No Basis For Concluding That Independent LECs Are Anything But Non-Dominant In Interexchange Services.

While not surprising, AT&T's attempt to shift the focus to the local market by ignoring conditions in the interexchange market, where it continues to have a majority of the business, is unconvincing. The Commission should see through AT&T's thinly veiled efforts to get the Commission to apply a different analysis to other carriers than it just recently applied to AT&T. By focusing attention away from the interexchange market where it is a powerful participant, AT&T attempts to obscure the fact it is simply not possible to find Independent LECs dominant in the interexchange market under any circumstances.

First, AT&T nowhere explains how applying dominant regulation to an Independent LEC's interexchange services could conceivably address alleged misconduct in the local exchange or access markets. A regulator should address the potential for misconduct in local and access services directly, rather than through the regulation of a downstream market. In the upstream markets under question -- local and exchange access -- the Commission already applies an extensive array of equal access, access charge, cost accounting and service monitoring regulations. As the Department of Justice recently stated, in opposing dominant classification of the BOCs in the interexchange market, traditional regulation of dominant carriers would not be appropriate where, as here, "the Commission can more effectively address the

problems by regulating the BOC directly and by regulating its relationship with its interLATA affiliate."[5]

Second, in attempting to divert attention from the characteristics of the interexchange market -- including its huge market share and the high supply and demand elasticities present in that market -- AT&T cites no authority for its incorrect proposition that it is "settled law" that market power can be proven directly by a mere reference to so-called bottlenecks without identifying the market in which the "market" power exists.[6]

Indeed, the current law on monopolization, essential facilities and "leveraging" establishes the contrary. In fact, mere possession of monopoly power or control of an essential facility is not unlawful without the added element of anticompetitive conduct. The antitrust monopolization analysis, which is analogous to the issues the Commission addresses in this proceeding, requires proof of both monopoly power *and* its willful acquisition or retention, that is, by anticompetitive means.[7] Thus, even if Independent LECs continued to possess a bottleneck, mere possession of "essential facilities" is not

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5 Reply Comments of the U.S. Department of Justice at 22 (August 30,1996).

6 In its Comments filed April 19, 1996, in CC Docket No. 96-61, AT&T cites a number of cases, but none of them support the proposition.

7 *See United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966). In the case of attempted monopolization, it is necessary to establish a "dangerous probability" of success. *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 455 (1993). No one suggests that there is a dangerous probability that the Independent LECs will monopolize interexchange telecommunications.

misconduct. A denial of access without legitimate business justification must also be shown.[8]

AT&T's "leveraging" argument is also without merit. GTE's opening Comments explained how the "leveraging" theory is dubious both as a matter of economics and as a matter of law.[9] Notably absent from the Comments of the IXCs is any demonstration that leveraging by Independent LECs is at all likely, or poses any significant threat to interexchange competition. Even AT&T concedes that Independent LECs "do not pose as great a threat to interexchange competition as the BOCs."[10] The Commission should insist on evidence -- not speculation -- if it has any intention of impeding the competitiveness of Independent LECs in the interexchange market by treating them as dominant.[11]

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8 *See, e.g., International Audiotext Network, Inc. v. AT&T, Inc.*, 893 F. Supp. 1207, 1213 (S.D.N.Y. 1994), *aff'd.* 62 F.3d 69 (2d Cir. 1995); *Twin Laboratories, Inc. v. Weider Heath & Fitness,* 900 F.2d 566, 569 (2d Cir. 1990).

9 *See* GTE Comments at 16. Although courts are divided, most agree that leveraging is not an antitrust violation in the absence of proof of actual or threatened monopolization in the downstream market. *See* cases collected in Amer. Bar Assoc., *Antitrust Law Developments* (Third) 246-252 (1992), and the 1992, 1993, 1994, and 1995] at 95-97, 77-78, 64-67, and 73-74, respectively. In any case, actual misconduct in the downstream market must be shown, and the better view is that it must create, or threaten the creation of, a monopoly in that market.

10 AT&T Comments at i. When its *own* regulatory status was at issue, AT&T had no difficulty in agreeing that the relevant market is nationwide. Further, AT&T makes no attempt in this docket to demonstrate that Independent LECs would have any market power in the national interexchange market.

11 GTE will leave to SNET the response to AT&T's complaints against that company. However, there is no evidence that the alleged misdeeds by SNET, even if true, are representative of Independent LECs generally. In any case, the

Third, even taken on its own terms, AT&T's argument for treating Independent LECs as dominant in the interexchange market is unavailing. There is neither a "bottleneck" nor an "undisputed" ability to "leverage" a local access position into the interexchange market in a way that creates market power. There has been no sustained denial of access or discrimination in its provision since AT&T surrendered its direction of the activities of the BOCs. Subsequent, unsubstantiated allegations of isolated cases of misconduct by one or another Independent LEC[12] do not warrant imposition of separation requirements on hundreds of Independent LECs at the expense of fair competition.

AT&T's rhetoric cannot create market power where it does not exist. GTE demonstrated in its opening Comments that, in an era of Section 251 interconnection and resale obligations, and alternative metropolitan fiber rings, the bottleneck has been effectively eliminated or certainly greatly diminished. Many other commenters concurred.[13]

Commission should not punish a whole class of companies on the basis of such contentions, when the Independent LECs have provided interexchange services as non-dominant carriers largely free of complaints for many years.

12 *See, e.g.*, AT&T Comments at 10-11.

13 *See, e.g.*, United States Telephone Association Comments at 5-8; Southern New England Telephone Company Comments at 12-25.

B. No Party Has Even Attempted To Show That Independent LECs In Fact Have Market Power In Interexchange Services.

Other than the theoretical speculations offered by AT&T and MCI, there is *no* attempt by any party to show that Independent LECs in fact have, or have exercised, market power in interexchange services.[14] Unlike the BOCs, Independent LECs[15] have been free to provide interexchange services for many years. By AT&T's logic, these companies should long ago have driven the incumbent IXCs from the market. Nevertheless, the Commission has never found any such Independent LEC dominant, and plainly no Independent LEC has achieved dominance. It is significant that Sprint, a vertically integrated carrier since the mid-1980's, does not advocate separation, notwithstanding the fact that it has much to lose from Independent LEC (and BOC) discrimination given the nationwide character of Sprint's interexchange business.[16]

Indeed, the logic of AT&T's attack would suggest that companies such as Sprint, an Independent LEC with a *facilities-based* interexchange affiliate, should be dominant, although the FCC has never found it to be so. In this light, AT&T's contention plainly has no merit.

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[14] See response to the Comments of the Commonwealth, *infra*.

[15] Although the GTE telephone operating companies ("GTOCs") were restricted from interexchange services, other GTE affiliates have been permitted in the interexchange business, even under the *GTE Consent Decree*.

[16] Sprint Comments at 7-8.

C. Attempts To Arrive At Dominant Tariff Regulation Through The Backdoor Should Also Be Rejected.

Although MCI does not contend that Independent LECs would truly be dominant in interexchange services, it nonetheless argues for the creation of a new category -- "less than completely dominant." MCI wants Independent LECs to be required to file interexchange tariffs on 45 days' notice, with full cost support, in order "to ensure that their interLATA rates cover all tariffed access rates and other costs."[17] Similarly -- and significantly -- AT&T urges the Commission to impose dominant carrier tariff regulation in order to ensure that Independent LEC interexchange services set "price floors."[18] While it is clear why an incumbent IXC would want to hamstring price competition in this manner, no IXC explains why enforcing the "imputation" rule requires the extreme measure of bootstrapping the substance of dominant tariff regulation in this manner.[19]

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17 MCI Comments at i, 6-7.

18 AT&T Comments at 9, n.16. AT&T's footnote tellingly confirms GTE's assertion that AT&T's underlying concern is that an Independent LEC might bring price competition into the interexchange market, threatening AT&T's substantial margins. *See* MacAvoy Statement at 5. Predatory pricing, however, is not a credible issue. The Supreme Court has stated that predation is "rarely tried, and even more rarely successful." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986). The Supreme Court's recent holding in *Brooke Group, Ltd. v. Brown & Williamson Tobacco Corp.* that, in a monopolization context, a claimant must show "a dangerous probability of recouping its [the predator's] investment in below cost prices," makes predatory pricing even less credible. 503 U.S. 209, 224 (1993).

19 The Commission has announced that it will consider access charge reforms in an upcoming proceeding. In any case, there is no basis for assuming that current charges are unreasonable.

GTE does not object to the imputation of access charges for the use of a GTOC's services. However, current cost accounting and cost allocation rules already govern transactions between an Independent LEC's local, access and interexchange operations in excruciating detail. The IXCs do not explain how these rules, which the FCC has found amply adequate to prevent cross-subsidy between local operations, on the one hand, and cellular, PCS, and open video systems on the other,[20] lose their effectiveness when applied to interexchange services.

Furthermore, the adverse policy consequences of advance notice tariff regulation are well known to this Commission. Advance tariff notice, such as the 45 day period urged by MCI, would slow the ability of Independent LEC's to lower price and would allow other IXCs to be in the marketplace with competitive alternatives 44 days before the Independent LEC received tariff approval.[21] In addition, the cost disclosures urged by MCI would require Independent LECs to provide their competitors with confidential information regarding costs (that are unrelated to local access services) that would only dampen price competition. The IXCs have failed to show that their speculative concerns outweigh the well-recognized adverse public policy consequences of dominant carrier tariff regulation.

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20 *See* SNET Comments at 27, n.40.

21 This would be exacerbated if the Commission chooses to forbear from tariffing non-dominant carriers and applies dominant tariff regulation to Independent LECs.

II. THERE IS NO BASIS FOR IMPOSING A SEPARATE AFFILIATE REQUIREMENT ON INDEPENDENT LECS (¶¶158-159).

GTE demonstrated in its opening Comments that the Commission should lift the *Competitive Carrier* separate affiliate requirement. Not surprisingly, however, some parties, particularly incumbent IXCs and other competitors of the Independent LECs, argue for retention of the *Competitive Carrier* affiliate requirement, for even more stringent restrictions. These should be rejected for the reasons discussed in the opening Comments of GTE and USTA.

A. Section 601 Of The 1996 Act Precludes Treating Independent LECs As If They Were RBOCs.

With the enactment of Section 601 of the Telecommunications Act of 1996, Congress specifically superseded both the *GTE Consent Decree* and the *AT&T Consent Decree*.[22] The *GTE Consent Decree* had prohibited the GTOCs from providing interexchange telecommunications services directly, but had allowed GTE or an affiliate of GTE not owned or controlled by a GTOC to provide such services. Section 601 thus embodies a deliberate determination by Congress that *neither* the separation requirements previously imposed by the GTE Consent Decree *nor* the Section 272 restrictions now imposed on the BOCs should apply to the GTOCs and, by implication, the other Independent LECs.

What Congress has decided, the Commission may not reverse. Thus, calls for more burdensome separation requirements must be rejected in light of the pro-

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[22] The 1996 Act, Section 601(a)(2).

competitive policy of the 1996 Act. Indeed, consistent with the spirit of that Act, the Commission should eliminate the remaining *Competitive Carrier* conditions and allow Independent LECs to operate free of regulatory encumbrances in the interexchange market.

In particular, the FCC should reject AT&T's request that it impose "the same regulatory requirements that will apply to the BOCs if and when the BOCs are permitted to provide [interLATA] services."[23] Those "same regulatory requirements," however, are those specified in Section 272 of the 1996 Act, which do not apply to Independent LECs, and could not be applied consistent with Congressional intent. There is simply no reason, statutory or otherwise, for limiting the ability of Independent LECs to organize their operations in the manner most suitable to their businesses.[24]

Similarly, the Commission should reject Teleport's confusing wishlist of anticompetitive constraints.[25] To the extent that it asks the Commission to impose a "complete separation," it goes far beyond the *Competitive Carrier* restrictions and runs contrary to Section 601 and Congress's deregulatory intent. Elsewhere, Teleport's Comments appear to reflect a misunderstanding of the statutory requirements and the

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23 AT&T Comments at 3; *see also id.* at 8-9 (FCC should "impose the same strict structural separation and non-discrimination requirements" on Independent LECs as on BOCs).

24 *Id.* at 8 (stating that Independent LECs should not be able to choose whether or not to provide interexchange services through a separate affiliate).

25 *See* Teleport Comments at 3. Indeed, at points Teleport's Comments appear to be addressing its concerns regarding the RBOCs, rather than Independent LECs. *Id.* at 5.

Fifth Competitive Carrier decision. Teleport asserts, without explanation, that LEC affiliates should be prohibited from providing local exchange service.[26] However, if the separate affiliate requirement is eliminated, consumers will benefit precisely because Independent LECs will be able to provide integrated local and interexchange services, just as the law currently allows Teleport itself and the IXCs to do.

B. The NPRM's Tentative Conclusion That There Is No Basis For Distinguishing Between Independent LECs On The Basis Of Size Is Correct.

In the *Notice,* the FCC tentatively concluded that there is no need to establish different regulatory policies to govern the interexchange operations of Independent LECs according to their size.[27] Several parties, implicitly acknowledging that separation is burdensome, suggest that smaller LECs could be treated differently, although their specific recommendations differ.[28] None of these Comments provides a persuasive rationale for the Commission to abandon its tentative conclusion that all Independent LECs should be treated the same.

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[26] *Id.* at 3. Even if the FCC decides to retain some form of separate affiliation, there is no reason why an Independent LEC's interexchange affiliate should not be allowed to resell local services in the same manner as all other IXCs and competing LECs. The Commission's rules have never prohibited this and the Commission should not now impose such a restriction. Such parity would promote competition in both local and interexchange services.

[27] *NPRM* at ¶15.

[28] NTCA Comments at 4 ("rural telcos" might be exempt from a separate affiliate requirement); SNET Comments at 31-32 (exempt LECs with less than 2 percent of total access lines); AT&T Comments at 11 (Tier 1 LECs only).

As the majority of Comments demonstrated, there is simply no basis for finding *any* Independent LEC dominant or for imposing a separate affiliate requirement. Relative burdens on particular Independent LECs become an issue only if one first assumes that any separation is necessary. Moreover, as GTE explained in its Comments, all Independent LECs generally share the characteristics of serving less-densely populated areas with fewer access lines per switch, and providing relatively little interexchange traffic that both originates and terminates in their region. GTE, for instance, owns a number of local companies that qualify as rural under the 1996 Act. In addition, GTE incurs greater costs than LECs that serve more densely populated areas due to the great dispersion of its operating companies across the Nation.

C. There Is No Need To Retain The Competitive Carrier Separate Affiliate Requirement.

The Competitive Carrier separate affiliate requirements obligate Independent LECs and their affiliates to: (1) use separate books of account; (2) not jointly own any transmission or switching facilities; and (3) obtain exchange telephone services at tariffed rates and conditions if the affiliate is to be treated as a non-dominant carrier.[29] GTE's opening Comments demonstrated that the burdens imposed by these requirements outweigh the benefits, and that they should be removed.

Although GTE agrees with Sprint that the prohibition on the joint ownership of transmission or switching facilities should be lifted, GTE disagrees with Sprint's view

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[29] *Competitive Carrier Proceeding*, 98 F.C.C.2d 1191, 1198 (1984) (*Fifth Report and Order*).

that cost accounting rules prohibit such sharing.[30] SNET's Comments provide an accurate summary of the accounting rules applicable to such facilities.[31] While Independent LECs typically will enter the interexchange market as resellers, and thus will have relatively little occasion to share facilities, the Commission already has sufficient rules in place to require appropriate cost attribution when facilities are shared.

To the extent GTE's interexchange operations take exchange telephone services from a GTE telephone operating company, it must be charged for such services on the same basis as other providers. If the Commission retains the separate affiliate requirement, however, it should modify the third *Competitive Carrier* requirement to allow the affiliate to take exchange services not only by tariff, but also on the same basis as providers that have negotiated interconnection agreements pursuant to Section 251. Given that under the Commission's current rules, the local exchange carriers must make interconnection agreements available to other carriers, affiliated carriers should be able to obtain services under such terms as well.

D. The Commonwealth's Request To Impose Additional Burdensome Regulations On The Micronesian Telecommunications Corporation Should Be Rejected.

In Comments filed on August 15, the Commonwealth of the Northern Mariana Islands (the "Commonwealth") attempts to raise a red herring in this proceeding by claiming that the Commission needs to "clarify" the status of the Micronesian

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30 Sprint Comments at 6.

31 SNET Comments at 21, n.29, *citing* 47 C.F.R. §64.901(b)(1) & (3).

Telecommunications Corporation ("MTC"), which is owned by GTE Hawaiian Telephone Company Incorporated ("GTE Hawaiian Tel").[32] The Commonwealth alleges that MTC is not operating in conformity with the Commission's *Competitive Carrier* and *International Competitive Carrier* Orders. The Commonwealth is incorrect; MTC is operating in full compliance with Commission Orders and policies.

First, the Commonwealth alleges that MTC is in violation of the *Competitive Carrier* policy by providing "domestic" interexchange services on an integrated basis as a non-dominant carrier.[33] This is simply incorrect. Although MTC provides domestic exchange, exchange access and interexchange services on an integrated basis, domestic interexchange services are provided on a dominant basis.

The Commonwealth appears to suggest that MTC has acted improperly by tariffing its service to U.S. points as international services. This is unsurprising; the Northern Mariana Islands have long been considered an international point for service to and from the United States.[34] The FCC has now interpreted the 1996 Act as having changed this aspect of the law by deeming the CNMI and other U.S. insular

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[32] Commonwealth Comments at 5-10. MTC provides local exchange, exchange access, and off-island services in the Commonwealth of the Northern Mariana Islands ("Northern Mariana Islands" or "CNMI").

[33] *Id.* at 6.

[34] MTC is not alone in tariffing offshore points such as the Northern Mariana Islands and Guam in its international tariff, *see, e.g.,* Sprint Tariff F.C.C. No. 1, p. 209 "International Service"; AT&T Tariff F.C.C. No. 27, p. 24-201 and p. 24-360; MCI Tariff F.C.C. No. 1, p. 19.9.1.9.2.8 and p. 19.9.1.8.23, since these points, though domestic, have traditionally been served through international facilities.

possessions as domestic points for rate integration purposes.[35] However, the integration of the Northern Mariana Islands into domestic rate schedules need not occur until August 1, 1997. It is GTE's understanding that these offshore locations will continue to be tariffed as international points for rate purposes until that time.

Second, the Commonwealth urges the Commission to classify MTC as a dominant international carrier.[36] The FCC stated unambiguously in 1985 that "all carriers presently providing IMTS except AT&T and the noncontiguous domestic carriers identified above [GTE Hawaiian Tel and four others] are non-dominant in the provision of IMTS." The Commission did *not* include MTC in this listing, and therefore it was classified as non-dominant. The *International Competitive Carrier* proceeding also clearly classified MTC's parent, GTE Hawaiian Tel, as dominant only for IMTS service involving Hawaii, and MTC was not included in that classification. The Commission has not disturbed these rulings for more than a decade, despite reexamining international dominance issues on numerous occasions. Imposing dominant regulation now, when MTC has operated as a non-dominant international carrier for years, clearly moves in the wrong direction. GTE strongly asserts that imposing additional regulation on MTC, a company serving 16,000 access lines in a rural location, is clearly contrary to the deregulatory spirit and intent of the 1996 Act.

In any case, as stated in its opening Comments, GTE agrees with the Commission's proposal in the *NPRM* to treat international and domestic interexchange

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35 *See* Section 254(g).

36 Commonwealth Comments at 9.

services the same. Like the interexchange market, however, GTE believes that Independent LECs have no market power in the international service market. This holds true for the CNMI as well. MTC's service to 16,000 lines in the Northern Mariana Islands surely cannot give it market power in the international services market.

Recycling allegations made in its Comments on MTC's Section 214 application to provide IMTS service to China, the Commonwealth again argues for the imposition of a "meaningful separate subsidiary" requirement for international services.[37] Although the merits of the Commonwealth's specific allegations have been addressed in the MTC Section 214 proceeding, several comments are appropriate here. In particular, the Commonwealth does not explain how the Commission could impose a separate subsidiary in view of Section 601 of the Act.[38] Under the Commission's current rules, a LEC providing integrated domestic interexchange service clearly can do so without an affiliate as a dominant carrier.[39] Although the Commonwealth does not hesitate to

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37 *Id.* at 8.

38 The Commonwealth argues that the "sunset" provision established by Section 272(f)(1) of the Act should not apply to any separate affiliate imposed upon MTC. Its basis for distinguishing MTC is that the statutory sunset provision is contained in a section of the 1996 Act (Section 272) which does not apply to Independent LECs. Commonwealth Comments at 12. The Commonwealth appears to be making the bizarre argument that the FCC should impose a separate affiliate requirement on MTC in contravention of the Act, and that such an affiliate should never sunset because the Section 272 sunset provision does not apply to Independent LECs such as MTC. The obvious response is that Congress had no reason to extend the Section 272 sunset to a requirement that does not exist.

39 As the Commission is well aware, *see NPRM* at ¶154, LECs have not generally operated integrated interexchange operations because the burdensome dominant requirements make it difficult to compete with non-dominant carriers. However, the small size of MTC and the rural nature of the CNMI could make the

suggest that MTC should establish a separate affiliate, it does not address the substantial costs involved in establishing a separate affiliate. For MTC, operating 16,000 access lines on an island in the Pacific Ocean, such additional costs would be substantial. Before the Commission orders such a requirement, it must balance the costs against the potential benefits. Furthermore, while the Commonwealth raises allegations of others, no finding has ever been made by a court or this Commission that MTC has engaged in any misconduct of the nature alleged by the Commonwealth. Certainly the Commonwealth has provided no evidence of any misconduct or otherwise improper pricing by MTC.[40]

III. THERE IS NO BASIS FOR IMPOSING MORE BURDENSOME REGULATIONS ON INDEPENDENT LECs' INTERNATIONAL SERVICES THAN ON THEIR DOMESTIC INTEREXCHANGE SERVICES (¶¶160-161).

The Commission's proposal to apply the same regulatory policies to both the domestic and international services offered by Independent LECs received wide

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cost of operating through a separate affiliate prohibitive. If the affiliate requirement is maintained, small LECs like MTC may decide not to establish separate affiliates for interexchange even though the consequence of an integrated operation would mean dominant carrier regulation.

[40] Although the Commonwealth attaches Comments of a competitor of MTC, IT&E Overseas, Inc., alleging misconduct, which were filed with the Department of Justice in 1995, this attachment should be given no weight. First, GTE has fully addressed these allegations in the appropriate forum, rebutting them entirely. Second, no finding has ever been made by a court or this Commission that MTC has engaged in any misconduct of the nature alleged by the Commonwealth. Finally, IT&E's allegations are obviously self-serving. MTC stands by its record in the CNMI. MTC has made diligent efforts to accommodate competition. In fact, MTC implemented equal access in the CNMI in 1993 despite the difficulties of operating outside the North American Numbering Plan. In contrast, equal access is still not available in the neighboring island of Guam.

support. While generally agreeing, MCI also urges the Commission to impose certain "additional conditions" that it previously had urged the agency to impose on the BOCs.[41] These additional burdens are unnecessary.

First, the factual predicate for MCI's concern regarding the BOCs does not exist in the case of Independent LECs. Independent LECs simply do not have the type of "regional focus" that MCI cited as the basis for its concern in the case of the BOCs.[42] Second, return traffic issues are relevant only to facilities-based carriers, and most Independent LECs lack their own international facilities.[43] Third, as MCI well knows, the Commission is engaged in an ongoing review of policy issues pertaining to international arrangements[44] and has indicated that it would entertain precisely the kinds of arrangements which MCI seeks to prohibit.[45]

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41 MCI Comments at 8. These "additional conditions" were based on MCI's argument that the BOCs' regional concentration might enable their facilities-based affiliates to negotiate special arrangements for return traffic, a factor not present in the case of Independent LECs. MCI urged imposition of a "no special conditions" clause on Section 214 authorizations and reporting requirements akin to those imposed on it by the Commission as a condition for British Telecom's massive investment in MCI.

42 As GTE and USTA explained in their opening Comments, even the larger Independent LECs typically are widely dispersed. To the extent that an Independent LEC has any geographic "focus," however, such concentration would seem to create efficiencies of distribution that should be encouraged as pro-competitive and consistent with the 1996 Act.

43 Although GTE Hawaiian Tel has international facilities from Hawaii, it does not now own any facilities used to provide domestic service.

44 *See Regulation of International Accounting Rates,* CC Docket No. 90-337.

45 Policy Statement on Accounting Rate Reform, 11 FCC Rcd 3146 ¶¶19-20 (1996).

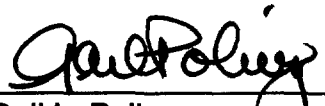
Finally, the special reporting requirements imposed on MCI were necessitated by the substantial investment in MCI by a dominant local and long distance U.K. carrier, not subject to the jurisdiction of the FCC. No comparable reporting requirements should be imposed on Independent LECs absent similar investments and similar international facilities.

CONCLUSION

For the foregoing reasons and for the reasons stated in its opening Comments, GTE Service Corporation, on behalf of its affiliated local exchange and interexchange operations, respectfully urges the Commission to eliminate the separate affiliate requirement for Independent LEC provision of interexchange services, and to classify such service offerings by Independent LECs as non-dominant for purposes of Title II regulation.

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone and interexchange companies



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September 13, 1996

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